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ABSTRACT

Access to federal lands is becoming more difficult for institutional outdoor programs. The Bureau of Land Management and the National Park Service are drafting rules to address institutional users, and the U.S. Forest Service is reviewing institutional use and sees a need for some type of permitting for this population. A 1996 study of federal land management agencies found that policies and regulations vary between and within agencies, managers are concerned about the impacts caused by wilderness experience programs (WEPs), managers offered proactive suggestions to address their concerns about WEPs, and managers felt that most WEP activities were not wilderness-dependent. The once-clear nonprofit educational status that gave WEPs privileged access has become blurred. If a program promotes itself to the general public, charges a fee for its services, and pays its staff, it is likely to be considered a commercial program by federal land managers. Recommendations for WEPs include maintaining communication with agency staff, developing a working knowledge of the laws and rules governing agencies, having a short biographical sketch of the WEP readily available, networking with other institutional programs, performing service projects on agency lands, changing the program format to meet access requirements, challenging agency decisions in court, and supporting federal legislation that addresses the needs of WEPs. A chart shows legislative authority, source of regulations, and permit type necessary for each land management agency. (TD)

OBTAINING INSTITUTIONAL ACCESS TO FEDERAL LANDS

Mike Beiser

Access issues have continually surfaced as one of the Association of Outdoor Recreation and Education's (AORE) top priorities and if your program utilizes federally regulated lands, access issues may be your programs top priority. At most of the recent International Conferences on Outdoor Recreation (ICORE), break out sessions and impromptu sessions have allowed an exchange of regional problems and some solutions. At the University of Utah in 1996 and Fort Walton 1998 we hosted a panel discussion of land managers and program coordinators. Most in attendance left with some new perspectives and solutions for current or future problems. Many things have evolved sense then. My hope here is to highlight some of these problems and offer techniques that have been used to successfully resolve and prevent future problems.

Federal public land access and use by institutional programs is a high priority for the National Park Service (NPS), Bureau of Land Management (BLM), and US Forest Service (USFS). Current actions by each agency are highlighted below.

USFS - Created Outfitter and Guide Administrative Guidebook to increase consistency of interpretation and application of policies for the management of organized group use. They are reviewing institutional use and see a need for some type of permitting for this population.

BLM - Currently drafting permitting regulations for institutional users.

NPS - With the passage of new federal legislation (S.1693), they are rule making to address institutional users groups.

- Agencies know there is a need for inter-agency communication and more common efforts in management of group use.
- Agencies want more dialogue with institutional outdoor programs.

Access issues can be very complex and almost always need to be solved on an issue by issue basis. They may involve one or more land management agencies, claims of unfair competition by other user groups, economics, risk management (accreditation, certification) or lack thereof. Many Southern California programs lost access to Joshua Tree, National Monument unless they were American Mountain Guide Association (AMGA) or Association of Experiential Education (AEE) accredited. Canadian programs have a similar certification problem operating in Canadian National Parks. Appalachian State recently lost access to the Nolichucky River in Pisgah National Forest on which they had a long and recorded history of use. Cal. Adventures at UC Berkeley has had a string of problems in recent years from being ticketed in Yosemite N.P., arrested on the Salmon river in Idaho (in a sting operation executed by the Idaho Guides and Outfitters Board and the BLM), and most recently being notified that permits they were operating under are no longer valid. Montana State University at Bozeman and Billings, have lost or been denied access to National Forests and National Park Lands by previous access methods and one university sponsored trip not affiliated with their program was stopped at the gate at Yellowstone National Park.

It may be fair to say if your program has not had a recent access issue you are not in the norm, you will have one around the corner, or you are doing everything right. Changes in land management agencies policies and changes in outdoor programming are at the root of many of these issues.

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Land managers are often thought of as the bad guys when confronted with denying or restricting access, but faced with shifting economics, shrinking budgets, increased use by ever-diverse groups, they have a tough job. As stewards of these public lands they have a much different perspective than that of the outdoor programmer, educator, or recreationalist. In 1996 Dan Gager of the University of Idaho, Wilderness Research Center, surveyed every federal agency and unit charged with managing lands over 5000 acres with active wilderness use by organized groups. This social science research was compiled in a master's thesis, *Agency Policies and Wilderness Managers' Attitudes toward Wilderness Experience Programs*.

The Study found that: 1. Agency policies and regulations vary among each of the agencies and within each agency in the type of permits they issue, how permits are issued, the type of fees for permits and also how fees are determined; 2. Managers are concerned about the ecological and social impacts caused by wilderness experience programs (WEPs); 3. Managers offered insightful, proactive suggestions to address their concerns about WEPs; and 4. Managers in general feel that most WEP activities are not wilderness dependent. However managers' attitudes about WEPs as a wilderness use and the valuable experiences they provide were generally positive. The underlying theme of the study is a lack of understanding and communication between managers and institutional programs. (a full copy or summary of this study is available from the U of I Wilderness Research Center at 208-885-2269, wrc@uidaho.edu).

As our profession of outdoor programming has evolved, the *once clear* non-profit/educational status which gave us privileged access has become blurred. Many institutional programs have originated or evolved beyond the bounds of land managers' interpretation of "not for profit". This is a natural maturation process of a profession driven by risk management. The need for safe vehicles, technically skilled staff with a developed sense of judgment, and high safety standards in a litigious society, requires funding. How that money is generated and used is becoming one of the keys to access.

At arms length away, you should be able to locate many keys to your access problems. Start with a self-examination of your program by looking at your promotional material; brochures, posters, catalogs and other descriptive materials. Would an agency perceive your program as a commercial or not for profit program? Do you promote to the public outside your institution, do you charge a fee for your services, and do you pay your staff? If yes, you are a commercial program on federal lands. If you have operated without a permit in the past, you may need one now, or should at least communicate with your land managers. Of course there is broad interpretation of all this.

Suggestions and Recommendations:

Communication: initiate and maintain communication with agency staff that are responsible for the land you will be using. As simple as it sounds, both agency and program staff say more of this is needed. The days of "don't ask, don't tell" access are coming to a close and provides no historical use record.

Knowledge of laws: inform yourself of the laws agency personnel are charge with enforcing. I use the term "law" to include Code (Code of Federal Regulations, CFR), Rules and Regulations, Manuals, and Handbooks. This knowledge is extremely helpful in communicating to land managers. Finding this information can take time. Start by asking agencies for copies of materials they use. Larger libraries and law libraries are a great resource. As of 1999 all the Titles of CFR that cover federal lands of interest are on the web

at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>. The chart below shows the legislative authority, source and permit type necessary for each agency.

Agency				
Source	U.S. Forest Service	National Park Service	Fish and Wildlife Service	Bureau of Land Management
<i>Legislative Authority</i>	Organic Administration Act of June 4, 1897 (30 Stat. 35; 16 U.S.C. 477-482, 551)	The Act of August 25, 1916 as amended in the Concessions Policy Act of 1965, (Public Law 89-249)	National Wildlife Refuge System Administration Act of 1966(Public Law 89-669)	Federal Land Policy and Management Act of 1976 (Public Law 94-579)
<i>Code of Federal Regulations</i>	Title 36, Part 251, Subpart B.	Title 36, Part 1.6, & Part 5.3	Title 50, Part 25 & 26	Title 43, Part 8372
<i>Manual</i>	FSM 2700	NPS 48 & 53	5 RM 17	BLM Manual 8560.151
<i>Type of Permit</i>	Special Use Permit	Incidental Business Permit	Special Use Permit	Commercial Use Permit

Biographical Sketch (Bio's): a one-page description of your program or individual trips. A good BIO with philosophy, affiliations, economics, etc. that may be pulled from a file cabinet or back pocket can help the communication process. The use of Bio's has opened many "use restricted doors" for Idaho's program, such as climbs on Mt. Rainier, Denali, and Mt. Logan. A Bio was once used in thwarting a near sea kayak confiscation in Mexico, but has yet to get us on Idaho's famed Middle fork of the Salmon river.

Regional Networking: if you are having a problem, chances are some other institutional program is too. Never under estimate the power of numbers and "group think" in arriving at solutions.

Service Projects: are always a positive proactive means of obtaining and maintaining access. Chances are you are already doing it in an unofficial, unrecorded manner. These don't have to be full-blown work trips, but small documented contributions are usually much appreciated.

Change your Program or Trip Format: in some cases you may need to do this to gain access at all, or find another site. Programs that have gone toward more structured programming say for liability reasons, may find a common adventure / cost-sharing approach gets access. Developing a more flexible programming style that meets access needs.

Litigation: following cases of unknown or known infractions of laws or rules and regulations we may find ourselves faced with citations or in court. If you feel strongly that your or your programs civil rights have been violated, fight it. If we can learn anything from our environmental colleagues, that have so strongly and sometimes successfully contested the federal agencies, this would be it.

Legislation: could be a very effective way of resolution to many current and future access problems. Our numbers and influential power should not be underestimated. Though

time consuming and costly, assisting in drafting and having sponsored at the congressional level an inter-agency bill may be the best resort. What would institutional legislation look like? Ask for? and Problems that would be created by?

The common thread that runs through these suggestions, is extra administrative work. At Merida we heard Simon Priest make his futuristic predictions of adventure programming and he writes in his book *Effective Leadership in Adventure Programming*, "program operations will be more regulated and complex in the future". Perhaps, the future is now.

Biographical Sketches

Mike Beiser, Coordinator, University of Idaho Outdoor Program, has worked with the U of I Program for the past 17 years, first as Asst. Coordinator under Jim Rennie, the past 10 years as Coordinator. He also teaches in a curriculum program for both the Division of HPERD and the College of Forestry, Wildlife, and Range Sciences Dept. of Resource Recreation and Tourism. Prior to employment at the University of Idaho he worked as a Climbing Ranger for six years at Grand Teton National Park and as a Mountaineering Ranger at Wrangell St. Elias National Park in Alaska. While working with the National Park Service he maintained a Federal Law Enforcement commission.

As a practitioner, he has climbed throughout the world, kayaked many western rivers and in 91-92 took a year long 6000 mile offshore sailing trip with his mate Teresa and 1-year old daughter Genoa. Still though, he feels his greatest accomplishments have been in organizing student trips and expeditions from the volcano's and Sea of Cortez of Mexico, to the summits of Denali, Mt. Logan and Kennedy, and of course down the many rivers of his home state Idaho. The greatest adventure of all, he claims, was helping to deliver his daughter Genoa.

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